

ORIGINAL

1 VIRGINIA:
2 IN THE COUNTY OF WASHINGTON
3

4 VIRGINIA DEPARTMENT OF MINES, MINERALS AND ENERGY
5 VIRGINIA GAS AND OIL INFORMAL FACT-
6 FINDING HEARING - 21008
7
8
9

10 APRIL 3, 2008
11

12 APPEARANCES:
13

14 BOB WILSON - DIRECTOR OF THE GAS AND OIL DIVISION
15 MARK SWARTZ - COUNSEL FOR ISLAND CREEK COAL COMPANY, INC.
16 TOM MULLINS - COUNSEL FOR GEOMET OPERATING COMPANY, INC.
17 SCOTT SEXTON - COUNSEL FOR GEOMET OPERATING COMPANY, INC.
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21

22
23 MICHELLE BROWN
24 COURT REPORTING, INC.
25 P. O. BOX 1325
GRUNDY, VIRGINIA 24614
(276) 935-7141
(276) 935-8374 (Fax)

1 BOB WILSON: Case docket for this conference is
2 21008. This hearing is convened under the Virginia Gas and
3 Oil Act Section 45.1-361.35, which allows objections to
4 permit applications to be filed by those with standing under
5 Section 45.1-361.30. Objections under the above-named
6 statute have been filed against a permit application for
7 GeoMet Operating Company Gas Operations 431VAD37 Rogers,
8 430VAD36 Rogers, 429VAD35 Rogers, 425VAE36 Rogers, 424VAE35
9 Rogers and 423VAE34 Rogers by Island Creek Coal Company coal
10 owner of lands affected by the above-named operations. All
11 objections were filed in a timely manner as required by
12 Section 45.1-361.35(a). Sharon, was notification sent to all
13 parties with standing to appear before this conference as
14 required by Section 45.1-361.35(h)?

15 SHARON HAGY: Yes.

16 BOB WILSON: Thank you. Again, will everybody who
17 is going to speak to this item identify themselves and what
18 your affiliation is here.

19 MARK SWARTZ: Mark Swartz for Island Creek Coal
20 Company.

21 TOM MULLINS: Tom Mullins with the Street Law Firm
22 on behalf of GeoMet.

23 SCOTT SEXTON: Scott Sexton on behalf of GeoMet.

24 TOM MULLINS: And I anticipate just incorporating
25 the prior evidence---.

1 MARK SWARTZ: No, you have to do it all over again.

2 TOM MULLINS: So, unless you want us to---.

3 (Laughs. Off record discussion.)

4 TOM MULLINS: With that said, there's no need, I
5 don't think, for anybody else.

6 BOB WILSON: Okay. Very good. Very good. It
7 sounds good to me. Okay, Section 45.1-361.35 of the Virginia
8 Gas and Oil Act allows objections of permit applications by
9 interest owners who received notification for proposed
10 operations. According to the permit application Island Creek
11 Coal Company is co-owner of the properties that will be
12 affected by the previously named operations and they have
13 standing to object to the applications. Objections filed by
14 Island Creek Coal Corporation against operations named
15 earlier are in accordance with Section 45.1-361.12, which
16 states in part, "If the well operator and the objecting coal
17 owner are unable to agree of a drilling location for a new
18 well within 2500 linear feet of an existing well or a well
19 for which a permit application is on file, the permit shall
20 be refused." Again, I'm I safe to make the assumption that
21 there's no point in further discussing among the parties and
22 the operator?

23 MARK SWARTZ: Correct.

24 BOB WILSON: Thank you. Okay. We will, as usual,
25 proceed with testimony from the objecting party, which is Mr.

1 Island Creek here, and unless there are specific differences,
2 we will consider all of these permits as a pile here. I
3 don't know of any specifics other than the distance
4 limitation---.

5 MARK SWARTZ: In my...in my letter objecting, I
6 simply copied the distances off of their plats. They are
7 all, you know, within the 2500 feet. So, it's, your know, a
8 pretty straight forward objection. And that's the substance
9 of it.

10 BOB WILSON: Okay.

11 MARK SWARTZ: I also complained about the consents,
12 but you're not...we're not hearing that.

13 BOB WILSON: That's correct.

14 MARK SWARTZ: Right.

15 BOB WILSON: I should have noted that with the---.

16 MARK SWARTZ: That's okay.

17 BOB WILSON: ---objections also raised the issue of
18 the lack of consents to stimulate with that being part of the
19 permit review process is not something we consider at the
20 informal hearings. Would you address any possible locations
21 that might be acceptable to you in any of these units?

22 MARK SWARTZ: There are none.

23 (Laugh.)

24 BOB WILSON: Okay.

25 MARK SWARTZ: I'm just real good at saying no.

1 That's why I'm here.

2 BOB WILSON: I'm just going to write down here,
3 "Swartz, No." Okay, docket "no" is finished. Would you care
4 to question him at all?

5 TOM MULLINS: No, I don't need to question him.
6 (Laughs.)

7 TOM MULLINS: He left so much wiggle room there.

8 MARK SWARTZ: Is there anything that we need to
9 cover that can't be done by incorporation because I---?

10 TOM MULLINS: I don't think so.

11 MARK SWARTZ: ---was thinking the same...we're
12 probably good to go. I mean, we've got the same arguments.

13 BOB WILSON: Okay.

14 MARK SWARTZ: You know, it's a little simpler
15 because we don't have Jewell, you know.

16 BOB WILSON: Sure. What I would like you to
17 do...yeah, it is, is if, in fact, that's the way you want to
18 go, if you could put that on the record and then give a brief
19 summary of positions on this relative because this...the only
20 thing that we're considering here are coal owner objections.
21 They are all basically the 2500 foot rule and that's all we
22 need to consider.

23 MARK SWARTZ: Well, my argument will be exactly the
24 same as what I just told you, the three things, because I
25 assume you're going to make the same arguments, Tom.

1 TOM MULLINS: I'm going to make the same argument.

2 MARK SWARTZ: So, I'm not even sure we need to do
3 that unless you really want to hear it again.

4 TOM MULLINS: If you want...here's what I'm willing
5 to...I'm willing to do whatever, but this may cover what
6 you're asking me to do. I'm incorporating the evidence and
7 arguments I have made in IFFC 20908 in these six well
8 locations.

9 BOB WILSON: And in two sentences or less---.

10 TOM MULLINS: Okay. They're not a coal operator.
11 The leased rights don't grant them the ability not to do
12 that. The constitutionality of the Act and the vested rights
13 remain in LBR. I don't think we've force pooled CNX in these
14 six. So, I don't think I can incorporate the Master Safety
15 Cooperation Agreement in this one. So, that will be the only
16 thing that's different. Otherwise, those same arguments that
17 I made previously.

18 BOB WILSON: Okay. And are you done with that?

19 TOM MULLINS: All my evidence, all my exhibits
20 etcetera---.

21 MARK SWARTZ: I incorporate everything, his and
22 mine so that we've got a complete record. Then my arguments
23 were, you know, what the agreement that we have is actually
24 the coal lease that we come within the statutory definition
25 of a coal owner, for the number of reasons that I said, that

1 gives Island Creek the right to assert the 2500 foot
2 objection. The plats indicate that all six of these are
3 within...distances is less than 2500 feet. We talked about
4 the constitutional issue and I offended you. You know, I
5 won't have to do that with regard to the construction of the
6 agreement because it's off the table in these, but that's
7 where I am here.

8 BOB WILSON: Okay.

9 MARK SWARTZ: Are we even going to have a hearing,
10 I'm sorry, on the other one that was set for today?

11 BOB WILSON: Yes, sir.

12 MARK SWARTZ: Okay. All right.

13 BOB WILSON: Yes, sir. You have no new dog in this
14 particular fight. Okay. Well, if that's it and it's all
15 anybody has to offer we will accept the testimony that was
16 given in the earlier event by incorporation it and we will
17 move on to the next one, if everybody is happy.

18 MARK SWARTZ: Right.

19 TOM MULLINS: Okay.

20 BOB WILSON: Thank you.

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25

1 STATE OF VIRGINIA,

2 COUNTY OF BUCHANAN, to-wit:

3 I, Sonya Michelle Brown, Court Reporter and Notary
4 Public for the State of Virginia, do hereby certify that the
5 foregoing hearing was recorded by me on a tape recording
6 machine and later transcribed under my supervision.

7 Given under my hand and seal on this the 28th day
8 of May, 2008.

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Sonya Michelle Brown
NOTARY PUBLIC

12 My commission expires: August 31, 2009.

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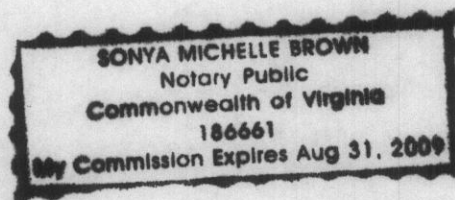
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DEPARTMENT OF MINES, MINERALS AND ENERGY,
DIVISION OF GAS AND OIL
BEFORE THE VIRGINIA GAS AND OIL BOARD



IN RE: APPEAL OF THE DECISION OF THE
DIRECTOR, VIRGINIA DIVISION OF GAS AND
OIL, DATED MAY 4, 2008, STYLED:

INFORMAL FACT FINDING CONFERENCE 21008
(HEREIN "IFFC 21008"); ISLAND CREEK COAL
COMPANY, (HEREIN "COAL OWNERS") vs.
GEOMET OPERATING COMPANY, INC. (HEREIN
"PERMIT APPLICANT" OR APPLICANT")

Docket No.: _____

RE: Permit Applications for Gas Operations:
431 VA-D37 Rogers, Application #11243
430 VA-D36 Rogers, Application #11244
429 VA-D35 Rogers, Application #11245
425 VA-E36 Rogers, Application #11246
424 VA-E35 Rogers, Application #11247
423 VA-E-34 Rogers, Application #11248
(Herein "Applications")

PETITION TO APPEAL OF DIRECTOR'S DECISION

GeoMet Operating Company, Inc., (hereinafter "GeoMet"), pursuant to Virginia Code §§
45.1-361.23 and 45.1-361.36 and 4 VAC 25-160-130 does hereby petition for review and appeal
of the Director's decision as set forth below:

- Petitioner and its counsel:** The Petitioner is **GeoMet Operating Company, Inc.**, 5336 Stadium Trace Parkway, Suite 206, Birmingham, AL 35244, (276) 963-2979. GeoMet's counsel is S. T. Mullins, P.O. Box 2100, Grundy, Virginia 24614.
- Identification of Decision being appealed:** The decision of Director, Virginia Division of Gas and Oil, dated May 4, 2008, being styled: "**Informal Fact Finding Conference 20908 (Herein "IFFC 21008")**", *Island Creek Coal Company* (hereinafter "Coal Owners") v. *GeoMet Operating Company, Inc.* (hereinafter "Permit Applicant" or "Applicant"), RE: Permit Applications For Gas Operations: 431 VA-D37 Rogers, Application #11243; 430 VA-D36 Rogers, Application # 11244; 429 VA-D35 Rogers, Application #11245; 425 VA-E36 Rogers, Application #11246; 424 VA-E35 Rogers, Application #11247; 423 VA-E34 Rogers, Application #11248 (Hereinafter "Applications").

3. Standing of the Petitioner to Appeal: The Petitioner has standing to petition and appeal as an aggrieved permit applicant pursuant to Va. Code § 45.1-361.23 (A).

4. Reasons for the Appeal and Reasons the Decision is Contrary to Law:

- a. The Director erred by refusing to allow GeoMet to amend its application to remove Island Creek Coal Company as a “coal owner”. The law authorizes and the Director freely grants leave to amend or modify permit applications and his refusal to do so in this instance is without support of law or fact.
- b. The Director erred by finding that GeoMet did not have a waiver from Island Creek Coal Company as to its ability to assert objections to spacing of wells within 2,500 feet of other wells on these pooled units. By pooling the rights of CNX, GeoMet obtained all rights of CNX in the units, including the waiver of the 2,500, as that waiver is stated in the “Master Cooperation and Safety Agreement”, submitted into evidence. Under the Master Cooperation and Safety Agreement, Island Creek Coal Company granted to CNX blanket consent to spacing on acreage including these units. Since CNX’s interests have been pooled in these units, this right (which applies to CBM gas production) has been pooled as well, benefiting all gas interests in the units.
- c. The Director erred by interpreting the lease of rights to mine between the actual coal owner – LBR Holdings, LLC’s predecessor in title – and Island Creek Coal Company finding that Island Creek Coal Company met the definition of “coal owner” as defined in Virginia Code § 45.1-361.1.
- d. The Director erred by finding that Island Creek Coal Company met the definition of “coal owner” as defined by Virginia Code § 45.1-361.1 by misinterpreting the lease between LBR Holdings, LLC’s predecessor in title – and Island Creek Coal Company.
- e. The Director erred by refusing to interpret the lease between LBR Holdings, LLC’s predecessor in title as to the rights granted and withheld to/from Island Creek Coal Company and the limitations thereon, which include, without limitation, the standing of Island Creek Coal Company and the jurisdiction of the Director to consider any objections of Island Creek Coal Company.
- f. The decision of the Director impairs and violates GeoMet’s constitutionally protected rights and privileges under both the United States Constitution and the Virginia Constitution by interfering with the vested rights of GeoMet and LBR Holdings, LLC.

5. Issues raised as required by Va. Code § 45.1-361.23: The issues raised above were raised as required in Va Code § 45.1-361.23.

6. Specific Relief Requested:

APPEAL OF THE MAY 4, 2008 DECISION OF THE DIRECTOR
VIRGINIA DIVISION OF GAS AND OIL
GeoMet Operating Company, Inc.
Page 2 of 3

a. The Board correct the errors of the Director set forth above;

b. The Board direct the issuance of the permits as requested in the Applications.

7. **Date of the Director's Decision:** The date of the director's decision was May 4, 2008.

8. **Certification of Filing:** Ten copies of this petition for review and appeal have been filed with the Department of Mines, Minerals and Energy, Division of Gas and Oil, with copies being forwarded to the parties who participated below.

GEOMET OPERATING COMPANY, INC

By Counsel

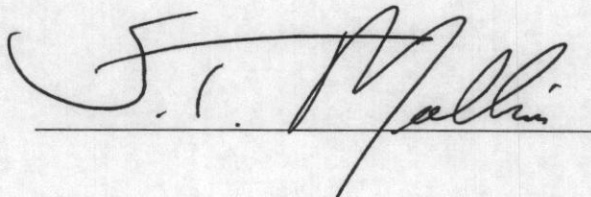


S.T. Mullins, Esq.
Street Law Firm LLP
P.O. Box 2100
Grundy, Virginia 24614
Telephone: 276-935-2128
Telefax: 276-935-4162

Counsel for GeoMet Operating Company, Inc.,

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2008, I caused a true and accurate copy of the foregoing Petition to Appeal to be placed in the United States Mails, postage pre-paid, to Mark Swartz, Esq., P.O. Box 1808, St. Albans, West Virginia 25177-1808; George Mason, Esq., 841 Corporate Drive, Suite 203, Lexington, Kentucky 40503; Ertel Whitt, Whitt Engineering, 135 Riverview Drive, Pikeville, Kentucky 41501; and LBR Holdings, LLC, P.O. Box 22427, Lexington, Kentucky 40522.



APPEAL OF THE MAY 4, 2008 DECISION OF THE DIRECTOR
VIRGINIA DIVISION OF GAS AND OIL
GeoMet Operating Company, Inc.
Page 3 of 3



GeoMet

COALBED METHANE EXPLORATION AND DEVELOPMENT

September 18, 2009

Mr. David Asbury
Director of the Division of Gas & Oil

GeoMet would like to withdraw these permits listed:

AP# 11248 (E34)
AP# 11247 (E35)
AP# 11246 (E36)
AP# 11244 (D36)
AP# 11243 (D37)
AP# 8032 (B43)
AP# 10080 (ZZZ41)

The reason for withdrawing these is due to extended time line involved in removing all litigation where as a re-permitting process would allow GeoMet to meet drilling obligations for 2009. Street Law Firm (Tom Mullins) will continue to clear up or resolving the outstanding issues concerning the withdrawn permits with Sharon Pigeon and Court responsibilities. Tee engineering should be filing all new permits of the listed above early next week.

Sincerely,

Ryan Carter

Drilling & Completion Manager

GeoMet Operating Company Inc.

STREET LAW FIRM, LLP

A LIMITED LIABILITY PARTNERSHIP

N. D. STREET
T. R. SCOTT, JR.
J. W. BOWMAN
R. J. BREIMANN
S. T. MULLINS
R. V. PRESLEY, II
L. W. BOWMAN
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P. O. BOX 2100
GRUNDY, VA 24614

E. K. STREET
(1943-1990)

TELEPHONE
(276) 935-2128

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(276) 935-4162

May 14, 2008

Virginia Oil and Gas Board
Attention: Mr. David Asbury
Director Division of Gas and Oil
Department of Mines, Minerals and Energy
P.O. Box 1416
Abingdon, Virginia 24212-1416

Re: Informal Fact Find Conference 21008
431 VA-D-37 Rogers, Application #11243 *Withdrawn*
430 VA-D-36 Rogers, Application #11244 ✓
429 VA-D-35 Rogers, Application #11245 ?
425 VA-E-36 Rogers, Application #11246 ✓
424 VA-E-35 Rogers, Application #11247 ✓
423 VA-E-34 Rogers, Application #11248 ✓

Dear Mr. Asbury:

Enclosed please find for filing a Petition to Appeal of Director's Decision relative to the above.

If you should have any questions or concerns, please do not hesitate to contact us.

With best regards, I remain

Yours truly,

S. T. Mullins
S. T. Mullins

/seb

Enclosure

cc: Jeff Taylor
Mark Swartz, Esq.
George Mason, Esq.
Ertel Whitt
LBR Holdings, LLC



DEPARTMENT OF MINES, MINERALS AND ENERGY,
DIVISION OF GAS AND OIL
BEFORE THE VIRGINIA GAS AND OIL BOARD



IN RE: APPEAL OF THE DECISION OF THE
DIRECTOR, VIRGINIA DIVISION OF GAS AND
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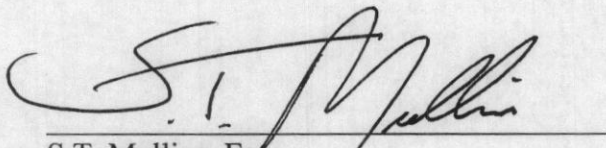
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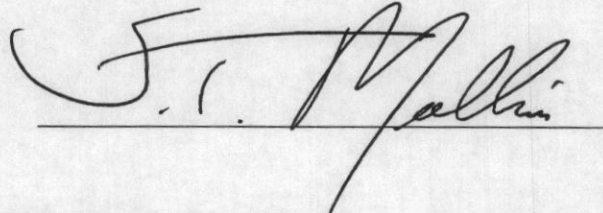
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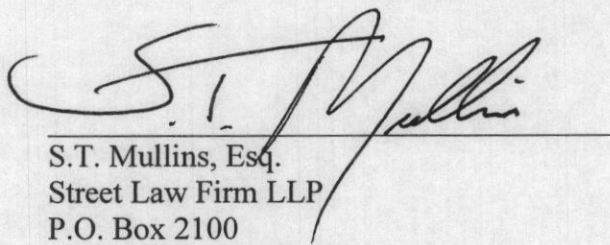
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- a. The Board correct the errors of the Director set forth above;
 - b. The Board direct the issuance of the permits as requested in the Applications.
7. **Date of the Director's Decision:** The date of the director's decision was May 4, 2008.
8. **Certification of Filing:** Ten copies of this petition for review and appeal have been filed with the Department of Mines, Minerals and Energy, Division of Gas and Oil, with copies being forwarded to the parties who participated below.

GEOMET OPERATING COMPANY, INC

By Counsel

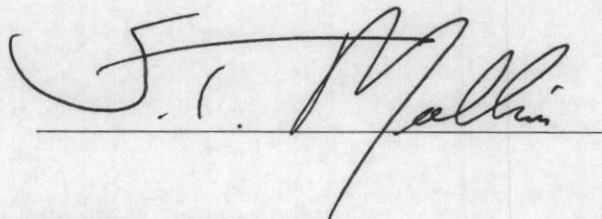


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Counsel for GeoMet Operating Company, Inc.,

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2008, I caused a true and accurate copy of the foregoing Petition to Appeal to be placed in the United States Mails, postage pre-paid, to Mark Swartz, Esq., P.O. Box 1808, St. Albans, West Virginia 25177-1808; George Mason, Esq., 841 Corporate Drive, Suite 203, Lexington, Kentucky 40503; Ertel Whitt, Whitt Engineering, 135 Riverview Drive, Pikeville, Kentucky 41501; and LBR Holdings, LLC, P.O. Box 22427, Lexington, Kentucky 40522.



APPEAL OF THE MAY 4, 2008 DECISION OF THE DIRECTOR
VIRGINIA DIVISION OF GAS AND OIL
GeoMet Operating Company, Inc.
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